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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 United States of America,  
10 Plaintiff,  
11 v.  
12 Carlos Alvarez-Espinoza,  
13 Defendant.  
14

No. CR-08-00611-002-PHX-DGC  
**ORDER**

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16 Defendant Carlos Alvarez-Espinoza is an inmate with the Federal Bureau of  
17 Prisons (“BOP”). He has filed a motion for reconsideration of the Court’s order denying  
18 the motion for compassionate release he filed pursuant to 18 U.S.C. § 3582(c)(1)(A).  
19 Doc. 489; *see* Docs. 464, 477. The motion is fully briefed. Docs. 491, 495. For reasons  
20 stated below, the Court will deny the motion.

21 **I. Background.**

22 Defendant received a 300-month prison sentence after a jury convicted him of  
23 hostage taking and harboring illegal aliens in June 2009. Docs. 221, 434. Defendant  
24 presently is confined at the United States Penitentiary in Atwater, California (“USP  
25 Atwater”). *See* Federal BOP, *Find an Inmate*, <https://www.bop.gov/inmateloc/> (last visited  
26 June 24, 2020). His projected release date is February 1, 2030. *See id.*<sup>1</sup>

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28 <sup>1</sup> Defendant was housed at the federal correctional institution in Victorville,  
California when he filed his motion for compassionate release. *See* Doc. 477 at 1.

1 Defendant filed his motion for compassionate release on August 10, 2020.  
2 Doc. 464. On August 13, the Federal Public Defender’s Office filed a notice stating that  
3 appointment of counsel was not warranted because Defendant’s motion fails to state a  
4 prima facie claim for relief under § 3582(c)(1)(A). Doc. 465 at 1. Specifically, the motion  
5 “reveal[ed] no mention of any health conditions or other extraordinary and compelling  
6 reasons for granting a sentence reduction.” *Id.* at 2. The government filed a response to  
7 the motion on August 24, arguing that Defendant has no medical condition that puts him  
8 at higher risk for severe illness from COVID-19 and that he otherwise has failed to show  
9 extraordinary and compelling reasons warranting compassionate release. Doc. 467 at 1.  
10 The government further argued that Defendant should not be released early because he  
11 poses a danger to the community. *Id.* at 9-10. Defendant filed a reply on September 9.  
12 Doc. 476.

13 The Court denied the motion on September 23, finding that Defendant had failed to  
14 show extraordinary and compelling reasons for compassionate release because he is only  
15 31 years old and has no medical condition that puts him at higher risk for severe illness  
16 from a COVID-19 infection. Doc. 477 at 5.<sup>2</sup> The Court further found that Defendant had  
17 failed to show he no longer is a danger to the community, noting that he “committed  
18 hostage taking by seizing, detaining, and threatening to kill the victims at gunpoint.”  
19 Doc. 477 at 5-6 (citing 18 U.S.C. § 3142(g)).

20 Defendant asks the Court to reconsider those rulings and grant him compassionate  
21 release based on recent Ninth Circuit authority, his COVID-19 infection, the conditions of  
22 confinement at USP Atwater, and his rehabilitation while in prison. Doc. 489 at 2-3.

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24 <sup>2</sup> See *United States v. Brown*, No. CR 17-153(6) ADM/DTS, 2020 WL 6136121,  
25 at \*2 (D. Minn. Oct. 19, 2020) (“At 30 years old, Brown’s risk for severe illness from  
26 COVID-19 is substantially lower than the risk to older adults.”) (citing Centers for Disease  
27 Control and Prevention (“CDC”), *Coronavirus Disease 2019: Older Adults*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (“[P]eople in  
28 their 60s or 70s are, in general, at higher risk for severe illness than people in their 50s. The greatest risk for severe illness from COVID-19 is among those aged 85 or older.”));  
*United States v. Vassallo*, No. 2:09-CR-00179-TLN, 2020 WL 3402436, at \*3 (E.D. Cal. June 19, 2020) (“[A]t age 40, Defendant does not satisfy the statute’s age-related conditions and is not in the high-risk age category for COVID-19.”).

## II. Reconsideration Standard.

Motions for reconsideration are disfavored and rarely granted. *See Nw. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9th Cir. 1988); *Resolution Tr. Corp. v. Aetna Cas. & Sur. Co.*, 873 F. Supp. 1386, 1393 (D. Ariz. 1994). Such a motion will be denied absent a showing of manifest error or new facts or legal authority that could not have been brought to the Court’s attention earlier with reasonable diligence. *See* LRCrim 12(a); LRCiv 7.2(g)(1); *United Nat’l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). The motion may not repeat previous arguments or “ask the Court to rethink what it has already thought through.” *Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003); *see Ross v. Arpaio*, No. CV 05-4177-PHX-MHM, 2008 WL 1776502, at \*2 (D. Ariz. 2008) (“Mere disagreement with a previous order is an insufficient basis for reconsideration.”).

## III. Defendant’s Motion for Reconsideration.

Under § 3582(c)(1)(A)(i), the Court may reduce a sentence where it finds that “extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” By its terms, the policy statement in U.S.S.G § 1B1.13 applies only to § 3582(c)(1)(A) motions filed by the BOP. *See United States v. Beck*, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019). The Ninth Circuit recently held that § 1B1.13 “may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.” *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).

Defendant cites *Aruda* to inform the Court that it was not constrained by § 1B1.13 in ruling on his motion for compassionate release. Doc. 489 at 3-4. The government notes, correctly, that the Court anticipated the Ninth Circuit’s holding in *Aruda* in finding that, while “the current policy statement may not constrain the Court’s independent assessment of whether ‘extraordinary and compelling reasons’ warrant a sentencing reduction under § 3582(c)(1)(A)(i), it does provide helpful guidance.” Doc. 491 at 2 n.1 (quoting Doc 477 at 4 n.2). *Aruda* provides no basis for the Court to reconsider its prior order. *See United*

1 *States v. Motalebi*, No. 2:17-CR-34 JCM (NJK), 2021 WL 2583548, at \*2 (D. Nev.  
2 June 23, 2021) (denying motion for reconsideration based on *Aruda* where “the court [had]  
3 never treated the policy statement as binding in ruling on compassionate release motions  
4 filed by defendants”).

5 Defendant states that he tested positive for COVID-19 on December 27, 2020.  
6 Doc. 489 at 6. The CDC reports that “[c]ases of reinfection with COVID-19 have been  
7 reported, but remain rare.” CDC, *Reinfection with COVID-19*, [https://www.cdc.gov/](https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html)  
8 [coronavirus/2019-ncov/your-health/reinfection.html](https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html) (last visited June 24, 2021). “Courts  
9 in this circuit . . . have held that ‘the risk of a second infection does not constitute  
10 sufficiently compelling grounds to justify compassionate release.’” *United States v. Nash*,  
11 No. CR-03-00059-001-PHX-JAT, 2021 WL 1969729, at \*2 (D. Ariz. May 6, 2021)  
12 (quoting *United States v. Risley*, No. 1:12-CR-0363 AWI, 2020 WL 4748513, at \*6 (E.D.  
13 Cal. Aug. 17, 2020)); *see also United States v. Purry*, No. 2:14-cr-00332-JAD-VCF-1,  
14 2020 WL 5909793, at \*2 (D. Nev. Oct. 6, 2020) (denying compassionate release where the  
15 defendant failed to show that he would be “more susceptible to the virus a second time”).  
16 The Court finds that the “rare chance” of COVID-19 reinfection “simply does not meet  
17 the bar for an extraordinary and compelling reason warranting release.” *United States v.*  
18 *Ieremia*, No. 16-CR-00744-DKW-1, 2021 WL 67313, at \*4 (D. Haw. Jan. 7, 2021); *see*  
19 *United States v. Newman*, No. 3:17-CR-00448-BR, 2021 WL 2593763 (D. Or. June 24,  
20 2021) (“Defendant is not in the age group that is considered to be at increased risk of severe  
21 illness from COVID-19. In addition, the Court finds persuasive the reasoning in the above  
22 cases regarding individuals who contracted and recovered from COVID-19 . . . . [T]he  
23 Court concludes Defendant has not established an extraordinary or compelling reason for  
24 compassionate release[.]”).

25 What is more, Defendant received the Moderna vaccine on May 11, 2021.  
26 Doc. 491-1. According to the CDC, “authorized vaccines in the [United States], including  
27 the Moderna vaccine, ‘are highly effective at protecting vaccinated people against  
28 symptomatic and severe COVID-19.’” *United States v. Upshaw*, No. 1:14-CR-00256-

1 NONE, 2021 WL 2417012, at \*1 (E.D. Cal. June 14, 2021) (quoting CDC, COVID-19,  
2 *Interim Public Health Recommendations for Fully Vaccinated People*, [https://www.](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fullyvaccinated-guidance.html)  
3 [cdc.gov/coronavirus/2019-ncov/vaccines/fullyvaccinated-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fullyvaccinated-guidance.html)); *see also United*  
4 *States v. Smith*, No. 17-CR-20753, 2021 WL 364636, at \*2 (E.D. Mich. Feb. 3, 2021)  
5 (“According to the CDC, the Moderna vaccine is exceptionally safe and effective,  
6 preventing 94.1% of infections in clinical trials.”) (quoting CDC, *Information About the*  
7 *Moderna COVID-19 Vaccine*, [https://www.cdc.gov/coronavirus/2019ncov/vaccines/](https://www.cdc.gov/coronavirus/2019ncov/vaccines/different-vaccines/Moderna.html)  
8 [different-vaccines/Moderna.html](https://www.cdc.gov/coronavirus/2019ncov/vaccines/different-vaccines/Moderna.html)). Defendant’s vaccination further mitigates his risk of  
9 becoming severely ill from COVID-19, and the rare threat of a COVID-19 reinfection does  
10 not present an extraordinary and compelling reason to grant compassionate release. *See*  
11 *Nash*, 2021 WL 1969729, at \*2 (“Further decreasing the risk associated with reinfection,  
12 Defendant has received his first dose of the Moderna COVID-19 vaccine.”). Indeed,  
13 “[m]any courts have found that a vaccinated prisoner’s risk of contracting COVID-19 does  
14 not rise to the level of an extraordinary and compelling reason, even in the presence of  
15 underlying health conditions.” *United States v. Hayes*, No. 4:17-CR-00289-DCN, 2021  
16 WL 2533517, at \*3 (D. Idaho June 21, 2021) (citing *United States v. Ballenger*, No. CR16-  
17 5535 BHS, 2021 WL 308814, at \*5 (W.D. Wash. Jan. 29, 2021) (“[B]ecause [defendant]  
18 has already been infected and vaccinated, his chronic medical conditions alone do not  
19 amount to an extraordinary and compelling reason to warrant compassionate release.”);  
20 *United States v. Grummer*, No. 08-CR-4402-DMS, 2021 WL 568782, at \*2 (S.D. Cal. Feb.  
21 16, 2021) (“Although Defendant suffers from several chronic medical conditions, his  
22 vaccination significantly mitigates the risk that he will contract COVID-19.”)); *see also*  
23 *United States v. Baeza-Vargas*, --- F. Supp. 3d ----, 2021 WL 1250349, at \*4 (D. Ariz. Apr.  
24 5, 2021) (“Although Baeza-Vargas’s age [and medical conditions] make her more likely to  
25 suffer serious complications from COVID-19, the FDA has concluded that the Moderna  
26 COVID-19 vaccine is 95% effective at preventing infection and virtually entirely effective  
27 in preventing severe disease, including in participants with comorbidities. . . . Under these  
28 circumstances, the Court does not find that Baeza-Vargas has shown extraordinary and

1 compelling reasons warrant[ing] a reduction in her sentence.”) (citations omitted); *United*  
2 *States v. Cortez*, No. CR-18-00858-01-PHX-SPL, 2021 WL 689923, at \*1 (D. Ariz. Feb.  
3 23, 2021) (“The Court cannot conclude, particularly in light of his vaccination, that  
4 Defendant’s current exposure to COVID-19 presents ‘extraordinary and compelling  
5 reasons’ to justify his release.”); *United States v. Bongiorno*, No. CR16-109RSL, 2021 WL  
6 2413348, at \*4 (W.D. Wash. June 14, 2021) (noting that “[c]ourts in this circuit have found  
7 that a defendant’s receipt of the COVID-19 vaccine weighs against granting compassionate  
8 release”) (citations omitted).

9 Defendant asserts that he cannot practice social distancing or otherwise protect  
10 himself from COVID-19 at USP Atwater. Doc. 489 at 7. But USP Atwater presently  
11 reports no active COVID-19 cases among inmates. See Federal BOP, *COVID-19 Cases*,  
12 <https://www.bop.gov/coronavirus/>. And as of June 25, 2021, USP Atwater has fully  
13 inoculated nearly 500 inmates – more than half of its population. See Federal BOP,  
14 *COVID-19 Vaccine Implementation*, <https://www.bop.gov/coronavirus/>; Federal BOP,  
15 *USP Atwater*, <https://www.bop.gov/locations/institutions/atw/> (listing a total inmate  
16 population of 939). Defendant has not shown that the COVID-19 protocols at USP Atwater  
17 will not protect him from a COVID-19 reinfection. See *United States v. Stoddard*, No.  
18 1:14-CR-76, 2021 WL 2379568, at \*5 (E.D. Va. June 9, 2021) (“[T]here are 0 active cases  
19 at USP Atwater and 415 of the 946 inmates at USP Atwater have been fully vaccinated to  
20 protect against COVID-19. Accordingly, nothing about COVID-19 provides an  
21 ‘extraordinary and compelling circumstance’ warranting a sentence reduction.”); *United*  
22 *States v. Saelua*, No. CR 13-00021-SOM-03, 2021 WL 2229041, at \*1 (D. Haw. June 2,  
23 2021) (denying compassionate release and noting that, as of June 1, 2021, USP Atwater  
24 had “no active COVID-19 case in its inmate population” and “390 inmates and 152 staff  
25 members . . . [had] been fully vaccinated against COVID-19”).

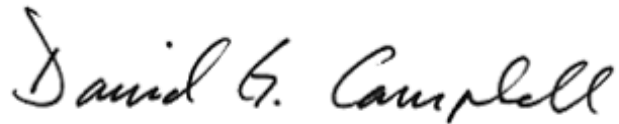
26 Defendant is concerned about possible new strains of COVID-19. Doc. 489 at 7-8.  
27 “[T]he need for a secondary ‘booster’ vaccine, or vaccine-resistant COVID-19 variants  
28 could emerge in the future, but there is no question now that the . . . Moderna vaccine has

1 dramatically reduced [Defendant's] risk of contracting COVID-19 [again]." *United States*  
2 *v. Garcia*, No. CR 18-40014-TSH, 2021 WL 1890290, at \*3 (D. Mass. May 11, 2021); *see*  
3 *also United States v. Kasic*, No. 18 CR. 30(PAC), 2021 WL 1026498, at \*2 n.4 (S.D.N.Y.  
4 Mar. 17, 2021) ("The Court notes Kasic's concerns that current vaccines may not be as  
5 effective against new strains of COVID-19. But, as Kasic states, 'Pfizer, Moderna, and  
6 Johnson & Johnson are already at work on' developing booster shots to increase vaccine  
7 efficacy against COVID-19 variants.") (citations omitted).

8 Defendant has failed to show extraordinary and compelling reasons for  
9 compassionate release. While Defendant's rehabilitative efforts are commendable (*see*  
10 Doc. 489 at 11-12), he has identified no valid reason for the Court to conclude that he no  
11 longer poses a danger to the community. *See* Doc. 477 at 5.<sup>3</sup> His motion for  
12 reconsideration will be denied. *See United States v. Zazweta*, No. 4:16-CR-176-BLW,  
13 2020 WL 5577876, at \*1 (D. Idaho Sept. 17, 2020) ("[T]he defendant has not carried her  
14 burden of showing 'extraordinary and compelling reasons' that would support a  
15 compassionate release and the Court cannot find that she would not be a danger to the  
16 community if released. Consequently, her motion will be denied.").

17 **IT IS ORDERED** that Defendant's motion for reconsideration (Doc. 489) is  
18 **denied.**

19 Dated this 28th day of June, 2021.

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22 David G. Campbell  
23 Senior United States District Judge  
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25 <sup>3</sup> Defendant asserts that he poses no danger because he will be removed to Mexico  
26 upon his release from prison. Docs. 489 at 15, 493 at 3. But "whether [D]efendant will be  
27 removed to Mexico is unknown and [he] may be released on bail, into the community,  
28 pending removal proceedings." *United States v. Guzman-Gonzalez*, No. 11-CR-00572-SI-  
2, 2021 WL 275548, at \*2 (N.D. Cal. Jan. 27, 2021). Defendant's reliance on *United States*  
*v. Ledezma-Rodriguez*, 472 F. Supp. 3d 498 (S.D. Iowa July 14, 2020), is misplaced  
because the defendant in that case "was a non-violent, low-level offender with no ties to  
large-scale criminal organizations[.]" 472 F. Supp. 3d at 500.